

CHAPTER 36  
DISCIPLINE

**657—36.1(147,155A,272C) Authority and grounds for discipline.**

**36.1(1)** The board has the authority to impose discipline for any violations of Iowa Code chapters 124, 124A, 124B, 126, 147, 155A, 205, and 272C or the rules promulgated thereunder.

**36.1(2)** The board has the authority to impose the following disciplinary sanctions:

- a. Revocation of a registration or of a license to operate a pharmacy or to practice pharmacy.
- b. Suspension of a registration or of a license to operate a pharmacy or to practice pharmacy until further order of the board or for a specified period.
- c. Nonrenewal of a registration or of a license to operate a pharmacy or to practice pharmacy.
- d. Prohibit permanently, until further order of the board, or for a specified period, the engaging in specified procedures, methods or acts.
- e. Probation.
- f. Require additional education or training.
- g. Require a reexamination.
- h. Order a physical or mental examination.
- i. Impose civil penalties not to exceed \$25,000.
- j. Issue citation and warning.
- k. Such other sanctions allowed by law as may be appropriate.
- l. Suspend for a specified period of time the licensee's privilege to participate in the medical assistance program operated by the state.
- m. Deny, suspend, or revoke a wholesale drug license.
- n. Refuse, suspend, or revoke a precursor substance permit.

**36.1(3)** The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

- a. The relative seriousness of the violation as it relates to assuring the citizens of this state a high standard of professional care.
- b. The facts of the particular violation.
- c. Any extenuating circumstances or other countervailing considerations.
- d. Number of prior violations or complaints.
- e. Seriousness of prior violations or complaints.
- f. Whether remedial action has been taken.
- g. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee, registrant, or permittee.

**36.1(4)** The board may impose any of the disciplinary sanctions set out in subrule 36.1(2), including civil penalties in an amount not to exceed \$25,000, when the board determines that the licensee, registrant, or permittee is guilty of the following acts or offenses:

- a. Fraud in procuring a license. Fraud in procuring a license includes but is not limited to an intentional perversion of the truth in making application for a license to practice pharmacy, to operate a pharmacy doing business in this state, or to operate as a wholesale drug distributor doing business in this state or in making an application for a registration to practice as a pharmacist-intern or a pharmacy technician, and includes false representations of a material fact, whether by word or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making such application, or attempting to file or filing with the board any false or forged diploma, certificate, affidavit, identification, or qualification in making such application for a license or registration in this state.

*b.* Professional incompetency. Professional incompetency includes but is not limited to:

(1) A substantial lack of knowledge or ability to discharge professional obligations within the scope of the pharmacist's practice.

(2) A substantial deviation by a pharmacist from the standards of learning or skill ordinarily possessed and applied by other pharmacists in the state of Iowa acting in the same or similar circumstances.

(3) A failure by a pharmacist to exercise in a substantial respect that degree of care which is ordinarily exercised by the average pharmacist in the state of Iowa acting under the same or similar circumstances.

(4) A willful or repeated departure from, or the failure to conform to, the minimal standard or acceptable and prevailing practice of pharmacy in the state of Iowa.

*c.* Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of pharmacy or engaging in unethical conduct or practice harmful to the public. Proof of actual injury need not be established.

*d.* Habitual intoxication or addiction to the use of drugs. Habitual intoxication or addiction to the use of drugs includes, but is not limited to:

(1) The inability of a licensee or registrant to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

(2) The excessive use of drugs which may impair a licensee's or registrant's ability to practice with reasonable skill or safety.

*e.* Conviction of a felony. A copy of the record of conviction or a plea of guilty shall be conclusive evidence.

*f.* Fraud in representations as to skill or ability. Fraud in representations as to skill or ability includes, but is not limited to, a pharmacist having made deceptive or untrue representations as to competency to perform professional services which the pharmacist is not qualified to perform by virtue of training or experience.

*g.* Use of untrue or improbable statements in advertisements.

*h.* Distribution of intoxicating liquors or drugs for other than lawful purposes. The distribution of drugs for other than lawful purposes includes, but is not limited to, the disposition of drugs in violation of Iowa Code chapters 155A, 124, and 126.

*i.* Willful or repeated violations of the provisions of Iowa Code chapter 147 or Iowa Code chapter 272C. Willful or repeated violations of these Acts include, but are not limited to, a pharmacist's, pharmacist-intern's, or pharmacy technician's intentionally or repeatedly violating a lawful rule or regulation promulgated by the board of pharmacy examiners or the state department of public health or violating a lawful order of the board in a disciplinary hearing or violating the provisions of Title IV (Public Health) of the Code of Iowa, as amended.

*j.* Violating a statute or law of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which statute or law relates to the practice of pharmacy or the distribution of controlled substances, prescription drugs, or nonprescription drugs.

*k.* Failure to report a license or registration revocation, suspension, or other disciplinary action taken by another state, territory or country.

*l.* Knowingly aiding, assisting, procuring, or advising another person to unlawfully practice pharmacy or to unlawfully perform the functions of a pharmacy technician.

*m.* Inability of a licensee or registrant to practice with reasonable skill and safety by reason of mental or physical impairment or chemical abuse.

*n.* Being adjudged mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a license or registration for the duration of the license or registration unless the board otherwise orders.

*o.* Submission of a false report of continuing education or failure to submit annual reports of continuing education.

*p.* Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice court claim or action.

*q.* Failure to file the reports required by subrule 36.2(4) concerning acts or omissions committed by another licensee or registrant.

*r.* Willful or repeated malpractice.

*s.* Willful or gross negligence.

*t.* Obtaining any fee by fraud or misrepresentation.

*u.* Violating any of the grounds for revocation or suspension of a license or registration listed in Iowa Code sections 147.55, 155A.12, and 155A.15.

*v.* Practicing pharmacy without an active and current Iowa pharmacist license, operating a pharmacy without a current pharmacy license, operating a prescription drug wholesale facility without a current wholesale drug license, practicing as a pharmacist-intern without a current pharmacist-intern registration, or assisting a pharmacist with technical functions associated with the practice of pharmacy without a current pharmacy technician registration except as provided in 657—subrule 22.4(3).

*w.* Attempting to circumvent the patient counseling requirements, or discouraging patients from receiving patient counseling concerning their prescription drug orders.

*x.* Noncompliance with a support order or with a written agreement for payment of support as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 252J.

*y.* Student loan default or noncompliance with the terms of an agreement for payment of a student loan obligation as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 261.

*z.* Engaging in any conduct that subverts or attempts to subvert a board investigation.

*aa.* Employing or continuing to employ as a practicing pharmacist any person whose Iowa pharmacist license is not current and active, or employing or continuing to employ a person to assist a pharmacist with technical functions associated with the practice of pharmacy who is not currently registered as a pharmacy technician except as provided in 657—subrule 22.4(3).

*ab.* Retaliatory action. Retaliating against a pharmacist, pharmacist-intern, or a pharmacy technician for reporting to the board as required by board rules or by federal or state law, making allegations of illegal or unethical activities, making other required reports to the board, or cooperating with a board investigation or survey under this chapter.

### **657—36.2(155A,272C) Investigations.**

**36.2(1) General.** The board shall, upon receipt of a written or verbal complaint, or may upon its own motion pursuant to other evidence received by the board, review and investigate alleged acts or omissions which the board reasonably believes constitute cause under applicable law or administrative rules for licensee, registrant, or permittee discipline.

**36.2(2) Reporting of judgments or settlements.** Each licensee or registrant shall report to the board every adverse judgment in a malpractice action to which the pharmacist, pharmacist-intern, or pharmacy technician is a party, and every settlement of a claim alleging malpractice. The report, together with a copy of the judgment or settlement, must be filed within 30 days from the date of the judgment or settlement.

**36.2(3) *Investigation of reports of judgments and settlements.*** Reports received by the board from the commissioner of insurance, insurance carriers, and licensees or registrants involving adverse judgments in a professional malpractice action, and settlement of claims alleging malpractice, which involve acts or omissions which constitute negligence, careless acts, or omissions in the practice of pharmacy, shall be reviewed and investigated by the board.

**36.2(4) *Reporting of acts or omissions.*** Each licensee or registrant, having firsthand knowledge of acts or omissions set forth in subrule 36.1(4), shall report to the board those acts or omissions when committed by another person licensed to practice pharmacy or registered to practice as a pharmacist-intern or as a pharmacy technician. The report shall include the name and address of the licensee or registrant and the date, time, and place of the incident.

**36.2(5) *Failure to report.*** Upon obtaining information that a licensee or registrant failed to file a report as required by subrule 36.2(4) within 30 days from the date the licensee or registrant initially acquired the information, the board may initiate a disciplinary proceeding against the licensee or registrant who failed to make the required report.

**36.2(6) *Confidentiality of investigative files.*** Complaint files, investigation files, and all other investigation reports and investigative information in the possession of the board or its employees or agents which relate to licensee, permittee, or registrant discipline shall be privileged and confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for their release to any person other than the licensee, permittee, or registrant, and the board, its employees, and agents involved in licensee, permittee, or registrant discipline, nor be admissible evidence in any judicial or administrative proceeding other than the proceeding involving licensee, permittee, or registrant discipline. The licensee, permittee, or registrant is not entitled to investigative reports and documentary information until a disciplinary proceeding has been commenced. However, a final written decision, finding of fact, and order of the board in a disciplinary proceeding shall be public record.

**36.2(7) *Investigation of allegations.*** In order to determine if probable cause exists for a disciplinary hearing, the board, the executive secretary/director, or someone designated by the executive secretary/director, shall cause an investigation to be made into the allegations of the complaint. In this regard, the person complained of may be furnished information concerning the complaint and given the opportunity to informally present a position or defense respecting the allegations of the complaint prior to the commencement of a contested case. This position or defense may be submitted in writing but a personal conference with the investigator(s) may be had as a matter of right upon request.

**36.2(8) *Investigatory subpoena powers.*** In connection with the reporting of acts and omissions as required in 36.2(4), the board is authorized by law to subpoena books, papers, records, and any other real evidence, whether or not privileged or confidential under law, to help determine whether a contested case proceeding (hearing) should be commenced.

**36.2(9) *Investigative report.*** Upon completion of the investigation, the investigator(s) shall prepare a report for the board's consideration, which report may contain the position or defense of the respondent, discuss jurisdiction, and set forth any legal arguments and authorities that appear applicable to the case. The report may be concluded with a recommendation as to whether probable cause exists for further proceedings.

**36.2(10) *Board consideration.*** The board shall review and rule on all investigative reports. Participation in the review and consideration of the investigative report(s) does not bar any board member from participating in any subsequent disciplinary proceeding.

**36.2(11) *Ruling on the initial inquiry.***

*a. Rejection.* If a determination is made by the board to reject the case, the complaint may be returned to the complainant along with a statement specifying the reason for rejection. A letter of explanation concerning the decision of the board may be sent to the subject of the investigation.

*b. Requirement of further inquiry.* If determination is made by the board to order further inquiry, the complaint and recommendations by the investigator(s) shall be returned to the investigator(s) along with a statement specifying the information deemed necessary.

*c. Acceptance of the case.* If determination is made by the board to initiate formal disciplinary action, the board shall direct the executive secretary/director to prepare a statement of changes and notice of hearing.

**657—36.3(147,272C) Peer review committees.**

**36.3(1)** The board may establish and register peer review committees in an emergency or under special circumstances.

**36.3(2)** The board shall determine which complaints or other matters shall be referred to the peer review committee for investigation, review, and report to the board.

**36.3(3)** The board may provide investigatory and related services to a peer review committee upon request.

**36.3(4)** A peer review committee may determine the method to be used in making its investigation, or that it is unable to investigate the report upon a complaint and return the complaint, together with an explanation, to the board.

**36.3(5)** A peer review committee shall observe the requirements of confidentiality imposed by Iowa Code section 272C.6.

**36.3(6)** Members of a peer review committee shall not be liable for acts, omissions, or decisions made in connection with service on the peer review committee. However, such immunity from civil liability shall not apply if such act is done with malice.

**36.3(7)** A peer review committee shall submit to the board for approval the procedures to be used for review, investigation, and handling of all complaints.

**657—36.4(17A,124,124B,126,147,155A,272C) Disciplinary proceedings.** The proceeding for revocation or suspension of a pharmacy license, a wholesale drug license, a pharmacy technician registration, a pharmacist-intern registration, or a license to practice pharmacy, or to discipline a person licensed to practice pharmacy, or the denial of a license, registration, or permit, or the suspension or revocation of a permit to handle precursor substances, or the refusal to issue or renew a license, registration, or permit, shall be substantially in accord with the procedures set forth in 657—Chapters 35 and 36 of these rules, which are an addition to the procedures stated in Iowa Code sections 147.58 et seq. and 155A.16.

**657—36.5(17A,124,124B,126,147,155A,272C) Notice of disciplinary hearing.**

**36.5(1)** The executive secretary/director shall prepare the notice of hearing upon direction to do so by members of the board upon a probable cause determination.

**36.5(2)** Contents. The notice of hearing shall contain the information set forth in 657—subrule 35.5(2).

**36.5(3)** Delivery. Delivery of the notice shall constitute the commencement of the contested case proceeding, and delivery may be executed by one of the methods provided for in 657—subrule 35.5(1).

**36.5(4)** Notice of a hearing involving denial of license, permit, or registration renewal shall be served no later than 30 days before the expiration of the license, permit, or registration.

**36.5(5)** Notice of a hearing involving revocation or suspension of a license, permit, or registration shall be served no less than 30 days before the time set for the hearing.

**657—36.6(17A,124B,147,155A,272C) Informal settlement.****36.6(1) Parties.**

a. A contested case may be resolved by informal settlement. Negotiation of an informal settlement may be initiated by the board or the respondent.

b. The board chairperson shall designate the executive secretary/director or one or more board members with authority to negotiate on behalf of the board.

**36.6(2) Waiver of notice and opportunity to be heard.** The decision to enter into informal settlement negotiations is voluntary on the part of the respondent. By entering into informal settlement negotiations, the respondent waives the right to seek disqualification of a board member pursuant to Iowa Code section 17A.17 and 657—35.9(17A) based on that board member's participation in the settlement negotiations. Upon initiation of negotiation, the assistant attorney general is authorized to discuss informal settlement with the board's designee. Consent to negotiation by the respondent also constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17 during informal settlement negotiation.

**36.6(3) Board approval.** All informal settlements are subject to approval of a majority of the full board. If the board fails to approve an informal settlement, it shall be of no force or effect to either party.

**36.6(4) Participation of designee.** A board member who is designated to act in negotiation of an informal settlement may review investigative material in the course of conducting the negotiation. The designated board member is not disqualified from participating in the adjudication of the contested case by virtue of reviewing the investigative material or having participated in negotiation discussions.

**657—36.7(272C) Appearance.** The respondent shall have the right to appear before the board in person or by attorney at the respondent's expense.

**657—36.8(17A,147,155A,124B,272C) Order of proceedings.** Before testimony is presented, the record shall show the identity of any board members present, the presiding hearing officer, the primary parties and their representatives, and the fact that all testimony is being recorded.

Hearings before the board generally follow the order established by these rules.

1. The presiding officer shall read the specification of charges and the answer thereto, or other responsive pleading, filed by the respondent prior to the hearing.

2. The assistant attorney general representing the public interest before the board may make an opening statement.

3. The respondent or respondents shall each be offered the opportunity to make an opening statement. A respondent may elect to reserve an opening statement until just prior to the presentation of evidence by the respondent.

4. The presentation of evidence on behalf of the public.

5. The presentation of evidence on behalf of the respondent(s).

6. Rebuttal evidence on behalf of the public.

7. Rebuttal evidence on behalf of the respondent(s).

8. Closing arguments, first on behalf of the public, then on behalf of the respondent, and then on behalf of the public.

**657—36.9(272C) Confidentiality.** At no time prior to the release of the final decision by the board shall any portion or the whole thereof be made public or be distributed to any persons other than the parties.

**657—36.10(17A,272C) Notification of decision.** All parties to a proceeding hereunder shall be promptly furnished with a copy of any final decision or order either in person or by first-class mail, or by telephone if necessary to ensure that the parties learn of the decision or order first.

**657—36.11(272C) Board decision.** The board's decision and order to discipline a licensee, registrant, or permittee or to revoke or suspend a license to practice pharmacy, a wholesale drug license, a license to operate a pharmacy, a registration to practice as a pharmacist-intern or as a pharmacy technician, or to suspend or revoke a permit to handle precursor substances, shall remain in force and effect until the appeal is finally determined and disposed of upon its merit unless the board grants a stay of its decision as provided for in rule 657—35.28(17A).

**657—36.12(17A,272C) Publication of decisions.** Final decisions of the board relating to disciplinary proceedings may be transmitted to the appropriate professional association and a newspaper of general circulation to be selected by the board.

**657—36.13(17A,124B,147,155A,272C) Reinstatement.** Any person whose license to practice pharmacy or to operate a pharmacy or whose wholesale drug license or permit to handle precursor substances or whose pharmacy technician registration or pharmacist-intern registration has been revoked or suspended must meet the following eligibility requirements:

1. Must have satisfied all the terms of the order of revocation or suspension or court proceedings as they apply to that revocation or suspension. If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license, registration, or permit was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the board's order or the date of voluntary surrender.

2. A person whose license to practice pharmacy was revoked or voluntarily surrendered must successfully pass the North American Pharmacist Licensure Examination (NAPLEX) or an equivalent examination as determined by NABP and the Multistate Pharmacy Jurisprudence Examination (MPJE), Iowa Edition.

3. All proceedings for reinstatement shall be initiated by the respondent who shall file with the board an application for reinstatement of the license, registration, or permit. Such application shall be docketed in the original case in which the license, registration, or permit was revoked, suspended, or relinquished. All proceedings upon petition for reinstatement, including all matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board. The board and the respondent may informally settle the issue of reinstatement. The respondent may choose to have an informal reinstatement conference before the board, as provided in rule 657—36.14(17A,124B,147,155A,272C).

4. An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension no longer exists and that it will be in the public interest for the license, registration, or permit to be reinstated. The burden of proof to establish such facts shall be on the respondent.

5. An order for reinstatement shall be based upon a decision which incorporates findings of facts and conclusions of law and must be based upon the affirmative vote of a quorum of the board. This order shall be available to the public as provided in 657—Chapter 14.

**657—36.14(17A,124B,147,155A,272C) Informal reinstatement conference.**

**36.14(1) Request.** Upon informed and written consent by the respondent, an informal reinstatement conference before the board may be held.

**36.14(2) Confidentiality.** The conference shall be open to the public except as provided in Iowa Code chapter 21 and Iowa Code section 272C.6. Material submitted to the board regarding a licensee, registrant, or permittee subject to suspension or revocation received prior to the filing of an application for reinstatement shall be deemed to be investigatory in nature and therefore confidential. After an application for reinstatement is filed by the respondent, no material regarding the respondent shall be presented to board members until either a formal hearing is held or a request for an informal settlement conference is made and approved. After a request for an informal settlement conference is made and approved, all material submitted by the respondent to the board for its consideration shall be deemed public records and is not confidential unless the respondent requests that the conference be closed. Upon filing a request for an informal reinstatement conference, the respondent consents to the provision of relevant materials to board members prior to the time of the informal reinstatement conference.

**36.14(3) Disposition.** After conducting an informal reinstatement conference, the board may issue a proposed order for reinstatement, may issue a proposed order denying reinstatement, or may order a formal hearing on the application.

**36.14(4) Appeal—formal hearing.** Upon appeal of a proposed order or upon the board's order for formal hearing, application for reinstatement shall be set for formal hearing subject to the same rules of procedure as other cases before the board. By consenting to the informal settlement conference, respondent waives any objection to any board member participating in a formal hearing by virtue of the board member's participation at the informal settlement conference. All materials submitted and statements made by the respondent at the informal settlement conference shall be admissible at a subsequent formal hearing.

**657—36.15(17A,124B,147,155A,272C) Voluntary surrender of a license, permit, or registration.**

A license to practice pharmacy, a license to operate a pharmacy, a wholesale drug license, a permit to handle precursor substances, a pharmacy technician registration, or a pharmacist-intern registration which has been voluntarily surrendered shall be considered a revocation of license, permit, or registration with respect to a request for reinstatement which will be handled under the terms established by rule 657—36.13(17A,124B,147, 155A,272C).

**657—36.16(17A,124B,147,155A,272C) License, permit, or registration denial.** Any request for a hearing before the board concerning the denial of a license, permit, or registration shall be submitted by the applicant in writing to the board by certified mail, return receipt requested, within 30 days of a mailing of a notice of denial of license, permit, or registration.

**657—36.17(272C) Disciplinary hearings—fees and costs.**

**36.17(1) Definitions.** As used in this chapter in relation to a formal disciplinary action filed by the board against a licensee or registrant:

“*Deposition*” means the testimony of a person pursuant to subpoena or at the request of the state of Iowa taken in a setting other than a hearing.

“*Expenses*” means costs incurred by persons appearing pursuant to subpoena or at the request of the state of Iowa for purposes of providing testimony on the part of the state of Iowa in a hearing or other official proceeding and shall include mileage reimbursement at the rate specified in Iowa Code section 70A.9 or, if commercial air or ground transportation is used, the actual cost of transportation to and from the proceeding. Also included are actual costs incurred for meals and necessary lodging.



*“Medical examination fees”* means actual costs incurred by the board in a physical, mental, chemical abuse, or other impairment-related examination or evaluation of a licensee or registrant when the examination or evaluation is conducted pursuant to an order of the board.

*“Transcript”* means a printed verbatim reproduction of everything said on the record during a hearing or other official proceeding.

*“Witness fees”* means compensation paid by the board to persons appearing pursuant to subpoena or at the request of the state of Iowa, for purposes of providing testimony on the part of the state of Iowa. For the purposes of this rule, compensation shall be the same as outlined in Iowa Code section 622.69 or 622.72 as the case may be.

**36.17(2)** The board may charge a fee not to exceed \$75 for conducting a disciplinary hearing which results in disciplinary action taken by the board against the license or registration. In addition to the fee, the board may recover from the licensee or registrant costs for the following procedures and personnel:

- a.* Transcript.
- b.* Witness fees and expenses.
- c.* Depositions.
- d.* Medical examination fees incurred relating to a person licensed or registered under Iowa Code chapters 147, 154A, 155, or 169.

**36.17(3)** Fees and costs assessed by the board pursuant to subrule 36.17(2) shall be calculated by the board’s executive secretary/director and shall be entered as part of the board’s final disciplinary order. The board’s final disciplinary order shall specify the time period in which the fees and costs shall be paid by the licensee or registrant.

**36.17(4)** Fees and costs collected by the board pursuant to subrule 36.17(2) shall be allocated pursuant to rule 641—173.20(272C). The fees and costs shall be considered repayment receipts as defined in Iowa Code section 8.2.

**36.17(5)** Failure of a licensee or registrant to pay the fees and costs assessed herein in the time specified in the board’s final disciplinary order shall constitute a violation of a lawful order of the board.

These rules are intended to implement Iowa Code sections 17A.10 to 17A.23 as amended by 1998 Iowa Acts, chapter 1202, 124.301, 124.304, 124B.12, 126.16 to 126.18, 155A.6, 155A.12, 155A.13, 155A.13A, 155A.15 to 155A.18, 155A.25, 205.11, 272C.3 to 272C.6, 272C.9, and 272C.10.

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